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4 P.O. Box 22711

5 Long Beach, CA 90802

6 Tel: (562) 436-3946

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8 **Attorneys for Specially Appearing Defendant,**
STICKLE STEAM SPECIALTIES CO., INC.

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12
13 HARRY LEMASTER and
14 CAROLYN LEMASTER,

15 Plaintiffs,

16 v.

17
18 ALLIS-CHAMBERS
19 CORPORATION PRODUCT
20 LIABILITY TRUST, et al.,

21 Defendants.

) Case No.: CV 08 3316 JCS (PJH)

)

) **NOTICE OF MOTION AND MOTION**
) **TO DISMISS BASED ON LACK OF**
) **PERSONAL JURISDICTION**

)

) **F.R.C.P. 12(b)(2)**

)

) **Date: September 10, 2008**

)

) **Time: 9:00 am**

)

) **Courtroom: 3**

)

) **United States District Court Judge**
) **Honorable Phyllis J. Hamilton**

)

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23 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

24 PLEASE TAKE NOTICE that on September 10, 2008, at 9:00 am, or as
25 soon thereafter as the matter may be heard in the above-entitled Court, located at
26 450 Golden Gate Avenue, San Francisco, California 94102, in Courtroom 3,
27 Defendant Stickle Steam Specialties Co., Inc. ("Stickle Steam") will enter a special
28 appearance to move this court for an order dismissing this defendant pursuant to


NOTICE OF MOTION AND MOTION TO DISMISS - CASE NO.: CV 08 3316
(JCS)

1 *Federal Rule of Civil Procedure* 12(b)(2). Said motion will be made on the
2 grounds that this Court lacks power to exercise personal jurisdiction as to
3 defendant Stickle Steam, in that no constitutionally-sufficient basis for jurisdiction
4 exists between said defendant and the State of California.

5 This motion is based on this Notice of Motion and Motion, the
6 Memorandum of Points and Authorities, the Declarations of R.H. "Bud" Stickle
7 and Thomas A. Steig filed herewith, the pleadings and papers on file herein, and
8 upon such other matters as may be presented to the Court at the time of the
9 hearing.

10
11 DATED: July 31, 2008

PRINDLE, DECKER & AMARO

12
13 By: 
14 THOMAS A. STEIG
15 Attorneys for Specially Appearing
16 Defendant,
17 STICKLE STEAM SPECIALTIES CO.,
18 INC.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF ISSUE

This is an asbestos-related personal injury lawsuit filed by plaintiffs Harry LeMaster and Carolyn LeMaster (collectively “plaintiffs”), who are currently California residents, against specially appearing defendant Stickle Steam Specialties Co., Inc. (“Stickle Steam”), an Indiana corporation. (Plaintiffs’ complaint is attached as Exhibit “A” to the Declaration of Thomas A. Steig (the “Steig Decl.”))¹ As against Stickle Steam, plaintiffs’ complaint alleges causes of action for negligence, strict liability, false representation, loss of consortium, and premises owner/contractor liability. (See Exhibit “A,” pgs. 1-3.) These causes of action are premised upon plaintiffs’ contention that plaintiff Harry LeMaster was exposed to asbestos via the work clothes of his father, Harry LeMaster, Sr., who worked as a steamfitter for Stickle Steam in Indianapolis, Indiana, from approximately 1950 to 1952. *It is therefore undisputed that plaintiffs’ claims against Stickle Steam arise solely from exposure which allegedly occurred while the LeMasters were residents of the State of Indiana.*

As set forth more fully in the points and authorities below, there is simply no rational connection or “nexus” between California and the parties, transactions and/or activities at issue as to Stickle Steam in this case. Consequently, Stickle Steam moves this court for an order dismissing it from this action.

II. STATEMENT OF FACTS

A. CORPORATE HISTORY OF STICKLE STEAM

Stickle Steam is a corporation that was incorporated on January 9, 1907, under and by virtue of the laws of the State of Indiana, and is still operating in that

¹ Plaintiffs’ personal injury complaint was originally filed in the San Francisco Superior Court of California on or about May 21, 2008. (See Exhibit “A,” to the Steig Decl.) Thereafter, on or about July 9, 2008, defendant Reliance Electric Company filed a Notice of Removal of Action to the Northern District Court of California. (See Notice of Removal attached as Exhibit “B,” to the Steig Decl.)

1 capacity today. (Declaration of R.H. "Bud" Stickle (the "Stickle Decl.") at ¶ 2.)
2 Since its inception, Stickle Steam's principal place of business has been located at
3 2215 Valley Avenue in Indianapolis, Indiana. (Stickle Decl. at ¶ 6.)

4 Stickle Steam is not registered to conduct business in California. (Stickle
5 Decl. at ¶ 4; and Corporations Code § 2105.) Stickle Steam does not pay any taxes
6 in California, and has no subsidiaries incorporated or qualified to do business in
7 California. (Stickle Decl. at ¶ 5.) Stickle Steam has no employees or agents for
8 service of process in California, and has likewise never maintained any offices,
9 warehouses, bank accounts or real property in this state. (Stickle Decl. at ¶¶ 4, 6
10 and 7.)

11 **B. THE TRANSACTIONS AND/OR ACTIVITIES AT ISSUE**

12 There is simply no evidence whatsoever even remotely establishing a link
13 between the transactions and/or activities at issue in this case and the State of
14 California. Plaintiff's father, Harry L. LeMaster Sr., worked for Stickle Steam in
15 the State of Indiana from 1950 to 1952, thereby allegedly exposing his son, Harry
16 LeMaster, to asbestos dust brought home on his work clothes. At the time of this
17 alleged exposure, the LeMasters were Indiana residents.

18 Aside from the instant lawsuit, Stickle Steam has no other connection with
19 the State of California. Stickle Steam never had any plants, offices, or sales agents
20 in California, including the alleged period in question, 1950 to 1952. (Stickle
21 Decl. at ¶¶ 3, 4 and 9.) Stickle Steam did not engage in forum-directed acts of
22 "purposeful availment" sufficient to confer jurisdiction as to asbestos personal
23 injury claims arising out of its purported asbestos-related activities.

24 On June 19, 2008, the Summons and Complaint in this case were personally
25 served on Lynn Stickle, secretary/treasurer at Stickle Steam, at her place of
26 residence in Indianapolis, Indiana. (Stickle Decl., at ¶ 7.) Stickle Steam has never
27 had an agent for service of process in the State of California. (Stickle Decl., at ¶ 7)
28 Lynn Stickle's acknowledgement of service in Indiana does not in itself confer

1 personal jurisdiction as to Stickle Steam in any California courts. (Stickle Decl. at
2 ¶ 8.)

3 **III. STICKLE STEAM'S MOTION TO DISMISS MUST BE GRANTED**
4 **BECAUSE NONE OF THE "TRADITIONAL" BASES FOR**
5 **PERSONAL JURISDICTION EXIST AS STICKLE STEAM HAS NO**
6 **"CONTACTS" WITH THE STATE OF CALIFORNIA WHICH**
7 **WOULD JUSTIFY THE EXERCISE OF PERSONAL**
8 **JURISDICTION IN THIS CASE.**

9 Federal Rule of Civil Procedure 12(b)(2) states that "[e]very defense to a
10 claim for relief in any pleading must be asserted in the responsive pleading if one
11 is required. But a party may assert the defense by motion based on lack of personal
12 jurisdiction."

13 Personal jurisdiction is an essential element of a court's jurisdiction, without
14 which the court "is powerless to proceed to an adjudication." (*Ruhrgas AG v.*
15 *Marathon Oil Co.* (1999) 526 U.S. 574.) The three traditionally recognized bases
16 for exercise of personal jurisdiction are: (1) service within the forum state
17 (physical presence); (2) domicile within the state; and (3) consent or appearance in
18 the action. (*Pennoyer v. Neff* (1877) 95 U.S. 714, 733.) State courts may also
19 exercise personal jurisdiction over non-resident defendants where "minimum
20 contacts" exist between the nonresident and the forum state. (*International Shoe*
21 *Co. v. Washington* (1945) 326 U.S. 310, 316.)

22 As we now explain, plaintiffs cannot establish the existence of personal
23 jurisdiction as to defendant Stickle Steam.

24 **A. NONE OF THE "TRADITIONAL BASES" FOR PERSONAL**
25 **JURISDICTION EXIST AS TO STICKLE STEAM.**

26 At the outset, plaintiffs cannot establish that any of the traditional bases for
27 personal jurisdiction exist as to Stickle Steam for three reasons. First, service was
28 not effected upon Stickle Steam within the State of California. Rather, the

1 Summons and Complaint in this case were sent via personal service to Lynn
2 Stickle, secretary/treasurer at Stickle Steam, at her place of residence in
3 Indianapolis, Indiana. (Stickle Decl., at ¶ 7.) Second, Stickle Steam is a
4 corporation that was organized under and by virtue of the laws of the State of
5 Indiana, which has never registered with the California Secretary of State's Office
6 to conduct business within the state, and has never maintained any offices in the
7 State of California. (Stickle Decl. at ¶¶ 4, 5, 6.) Third, Stickle Steam does not
8 consent to jurisdiction in the State of California, has not previously appeared in
9 this action, and has timely raised the defense of lack of personal jurisdiction in
10 connection with the instant motion. (Stickle Decl. at ¶ 8.)

11 **B. STICKLE STEAM HAS NO OTHER "CONTACTS" WITH**
12 **THE STATE OF CALIFORNIA WHICH WOULD JUSTIFY**
13 **THE COURT'S EXERCISE OF PERSONAL JURISDICTION**
14 **IN THIS CASE.**

15 Absent one of the traditional bases for jurisdiction above (i.e., presence,
16 domicile or consent), due process requires that the non-resident defendant have
17 "certain minimum contacts with [the forum state] such that the maintenance of the
18 suit does not offend traditional notions of fair play and substantial justice."
19 (*International Shoe*, supra, 326 U.S. at p. 316.)

20 Non-resident defendants who engage in "substantial, continuous and
21 systematic" commercial activities within the forum state are subject to general
22 (unlimited) jurisdiction as to any cause of action – even those unrelated to
23 defendant's activities within the forum state. (*Perkins v. Benguet Consolidated*
24 *Mining Co.* (1952) 342 U.S. 437, 446-447; *Vons Cos., Inc. v. Seabest Foods, Inc.*
25 (1996) 14 Cal.4th 434, 446 "[s]uch a defendant's contacts with the forum are so
26 wide-ranging that they take the place of physical presence in the forum state as a
27 basis for jurisdiction".) Moreover, even if a non-resident defendant's "contacts"
28 with the forum state are not sufficiently continuous and systematic for general

1 jurisdiction, the defendant may still be subject to “limited” or “specific”
2 jurisdiction on claims related to its activities or contacts there. However, such
3 “limited” or “specific” personal jurisdiction requires a showing that: (1) the non-
4 resident defendant purposefully directed its activities at forum residents or
5 otherwise purposefully availed itself of the privilege of conducting activities
6 within the forum state; (2) plaintiff’s causes of action arise out of or are related to
7 the non-resident defendant’s forum-related activities; and (3) the forum state’s
8 exercise of personal jurisdiction in the particular case comports with fair play and
9 substantial justice. (*Hanson v. Denckla* (1958) 357 U.S. 235, 253-254; *Burger*
10 *King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 477-478; *Vons Cos*, supra, 14
11 Cal.4th at p. 446.)

12 In products liability actions such as the one at hand, the issue is whether the
13 mere fact that the “stream of commerce” brings the non-resident’s product into the
14 forum state is enough “contact” to support personal jurisdiction over the non-
15 resident. A manufacturer or national distributor may be subject to personal
16 jurisdiction wherever the product causes injury. Local courts may properly “assert
17 personal jurisdiction over a corporation that delivers its products into the stream of
18 commerce with the expectation that they will be purchased by consumers in the
19 forum State.” (*World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286,
20 297-298.)

21 Furthermore, the relevant period during which “minimum contacts” must
22 have existed is when the cause of action arose rather than when the complaint was
23 filed or served. (See *Boaz v. Boyle* (1995) 40 Cal.App.4th 700, 717.) In the
24 instant case, plaintiffs have not alleged that Stickle Steam’s alleged asbestos-
25 containing products caused an injury in California during the relevant period.
26 Rather, plaintiffs’ complaint alleges that the asbestos exposure plaintiff Harry
27 LeMaster allegedly sustained as a result of his father’s employment at Stickle
28 Steam, an Indiana corporation, occurred ***while the LeMasters were Indiana***

1 *residents.* (See Exhibit "A," at pg. 6, lines 9-14.) Plaintiffs further allege that he
2 was exposed to asbestos during his father's employment with Stickle Steam, an
3 Indiana corporation, from 1950 to 1952. (See Exhibit "A," at pg. 6, lines 9-14.)

4 In short, Stickle Steam has had no contacts with the State of California
5 which would even remotely justify the court's exercise of general or
6 limited/specific personal jurisdiction, as evidenced by the following facts:

- 7 (1) Stickle Steam is a corporation that was incorporated under and by
8 virtue of the laws of the State of Indiana, with its principal place of
9 business in Indianapolis, Indiana. (Stickle Decl. at ¶¶ 2 and 6.)
- 10 (2) Stickle Steam does not pay any taxes in California or maintain any
11 bank or saving and loan accounts in California. (Stickle Decl. at ¶ 5.)
- 12 (3) Stickle Steam has no subsidiaries incorporated or qualified to do
13 business in California. (Stickle Decl. at ¶ 5.)
- 14 (4) Stickle Steam has never owned, leased, possessed, and/or maintained
15 any real property in the State of California. (Stickle Decl. at ¶ 6.)
- 16 (5) Stickle Steam has never rented, operated or otherwise maintained any
17 offices or warehouses in the State of California, and has no employees
18 or sales representatives who reside in the State of California. (Stickle
19 Decl., at ¶ 6.)
- 20 (6) Stickle Steam has never registered with the Office of the Secretary of
21 California, and has no offices, headquarters, or sales agents in
22 California. (Stickle Decl., at ¶ 4.)
- 23 (7) Stickle Steam has never had an agent for service of process in the
24 State of California. (Stickle Decl. at ¶ 7.)

25 Given these facts, it cannot reasonably be said that plaintiffs' claims in any
26 way relate to activities conducted by Stickle Steam in the State of California to
27 satisfy the due process clause. California cases have consistently held that "merely
28 knowing the product will enter California, without having some control over its

1 ultimate destination, does not satisfy the due process clause.” (*Carretti v. Italpast*
2 (2002) 101 Cal.App.4th 1236, 1246.) Because there is no admissible evidence
3 even remotely establishing that Stickle Steam purposefully directed its activities at
4 California residents or otherwise purposefully availed itself of the privilege of
5 conducting activities within California, exercise of personal jurisdiction in this
6 case would not comport with principles of fair play and substantial justice.
7 Consequently, dismissal of Stickle Steam on grounds of lack of personal
8 jurisdiction is warranted.

9 **III. CONCLUSION**

10 For the foregoing reasons, defendant Stickle Steam respectfully submits that
11 no constitutionally-sufficient basis for personal jurisdiction exists between itself
12 and the State of California. Accordingly, Stickle Steam moves this court for an
13 order dismissing it from this action based on lack of personal jurisdiction.
14

15 DATED: July 31, 2008

PRINDLE, DECKER & AMARO

16
17 By: 

18 THOMAS A. STEIG

19 Attorneys for Specially Appearing
20 Defendant,

21 STICKLE STEAM SPECIALTIES CO.,
22 INC.
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26
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1 Thomas A. Steig, Esq. (Bar No. 119341)
Grace C. Mori, Esq. (Bar No. 168812)

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8 **Attorneys for Specially Appearing Defendant,**

STICKLE STEAM SPECIALTIES CO., INC.

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12
13 HARRY LEMASTER and
14 CAROLYN LEMASTER,

15 Plaintiffs,

16 v.

17
18 ALLIS-CHAMBERS
19 CORPORATION PRODUCT
20 LIABILITY TRUST, et al.,

21 Defendants.

) Case No.: CV 08 3316 (JCS)

)

) **DECLARATION OF R.H. BUD STICKLE**
) **IN SUPPORT OF MOTION TO DISMISS**
) **BASED ON LACK OF PERSONAL**
) **JURISDICTION**

)

)

) **Date: September 10, 2008**

) **Time: 9:00 am**

) **Courtroom: 3**

)

) **United States District Court Judge**
) **Honorable Phyllis J. Hamilton**

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1 I, R.H. "Bud" Stickle, hereby declare as follows:

2 1. I am the President of specially appearing defendant Stickle Steam
3 Specialties Co., Inc. ("Stickle Steam"). I make this declaration in support of
4 Stickle Steam's Motion to Dismiss for Lack of Personal Jurisdiction in connection
5 with the action entitled *Harry LeMaster and Carolyn LeMaster v. Allis-Chambers*
6 *Corporation Product Liability Trust, et al.*, United States District Court, Northern
7 District of California, Court Case No. CV 08 3316 JCS. The facts set forth herein
8 are true of my own personal knowledge, and if called upon to testify thereto, I
9 could and would competently do so under oath.

10 2. I have been the President of Stickle Steam since 1976. I am
11 intimately familiar with Stickle Steam's corporate history, as well as its day-to-day
12 operations. Stickle Steam is a family run business that was first incorporated by
13 my great, great uncle. Stickle Steam is a corporation that was incorporated under
14 and by virtue of the laws of the State of Indiana on January 9, 1907, and is still
15 operating in that capacity today.

16 3. Plaintiffs have alleged in their personal injury complaint that plaintiff
17 Harry LeMaster was exposed to asbestos from the work clothes of his father, Harry
18 L. LeMaster Sr., who worked as a steamfitter for Stickle Steam, located in
19 Indianapolis, Indiana, from approximately 1950 to 1952. The alleged exposure
20 occurred while the LeMasters were residents of the State of Indiana. Plaintiffs'
21 complaint alleges causes of action for negligence, strict liability, false
22 representation, loss of consortium, and premises owner/contractor liability.

23 4. Stickle Steam has not purposefully directed its business in the State of
24 California and has never registered with the Office of the Secretary of the State of
25 California. Furthermore, Stickle Steam has never had any plants, offices,
26 employees, headquarters, or sales agents in California.
27
28

1
2 5. Stickle Steam does not pay any taxes in California or maintain any
3 bank or saving and loan accounts in California. Stickle Steam has no subsidiaries
4 incorporated or qualified to do business in California.

5 6. Since its inception, Stickle Steam's principal place of business has
6 been located at 2215 Valley Avenue in Indianapolis, Indiana 46218. It never
7 owned, leased, possessed, and/or maintained any real property in the State of
8 California. Stickle Steam has likewise never rented, operated or otherwise
9 maintained any offices or warehouses in the State of California, and has no
10 employees or sales representatives who reside in the State of California.

11 7. On June 19, 2008, the Summons and Complaint in this case were
12 personally served on Lynn Stickle, secretary/treasurer at Stickle Steam, at her
13 place of residence in Indianapolis, Indiana. Stickle Steam has never had an agent
14 for service of process in the State of California.

15 8. Stickle Steam has not previously appeared in this action, and does not
16 consent to jurisdiction in the State of California.

17 9. All of Stickle Steam's employees/officers who may have knowledge
18 of facts relating to Harry L. LeMaster Sr.'s employment reside in the State of
19 Indiana.
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1 10. The cost of obtaining the attendance of witnesses at depositions
2 and at trial here in California will be an extreme hardship for Stickle Steam, not
3 just in terms of airfare, hotels, transportation and other costs associated with travel,
4 but also in terms of its employees' lost time at work and the accompanying loss of
5 revenue.

6 I declare under penalty of perjury under the laws of the State of California
7 that the foregoing is true and correct. Executed this 31 day of July, 2008, at
8 Indianapolis, Indiana.

9 
10 R.H. "BUD" STICKLE - Declarant

1 Thomas A. Steig, Esq. (Bar No. 119341); tsteig@pdalaw.com
2 Grace C. Mori, Esq. (Bar No. 168812); gmori@pdalaw.com

3 **PRINDLE, DECKER & AMARO LLP**

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7 **Attorneys for Specially Appearing Defendant,**
8 **STICKLE STEAM SPECIALTIES CO., INC.**

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12
13 HARRY LEMASTER and
14 CAROLYN LEMASTER,

15 Plaintiffs,

16 v.

17
18 ALLIS-CHAMBERS
19 CORPORATION PRODUCT
20 LIABILITY TRUST, et al.,

21 Defendants.

) Case No.: CV 08 3316 JCS (PJH)

)

) **DECLARATION OF THOMAS A. STEIG**
) **IN SUPPORT OF MOTION TO DISMISS**
) **BASED ON LACK OF PERSONAL**
) **JURISDICTION**

)

)

) **Date: September 10, 2008**

) **Time: 9:00 am**

) **Courtroom: 3**

)

) **United States District Court Judge**
) **Honorable Phyllis J. Hamilton**

)

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23 ///

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1 I, Thomas A. Steig, hereby declare as follows:

2 1. I am an attorney, duly licensed to practice law in all courts of the
3 State of California, and am a partner with the law firm of Prindle, Decker &
4 Amaro LLP, counsel for specially appearing defendant Stickle Steam Specialties
5 Co., Inc. ("Stickle Steam"). I make this declaration in support of Stickle Steam's
6 Motion to Dismiss based on Lack of Personal Jurisdiction in connection with the
7 action entitled *Harry LeMaster and Carolyn LeMaster v. Allis-Chambers*
8 *Corporation Product Liability Trust, et al.*, United States District Court, Northern
9 District of California, Court Case No. CV 08 3316 JCS. The facts set forth herein
10 are true of my own personal knowledge, and if called upon to testify thereto, I
11 could and would competently do so under oath.

12 2. Attached hereto as Exhibit "A" is a true and correct copy of summons
13 and plaintiffs Harry LeMaster and Carolyn LeMaster's personal injury complaint
14 filed in the San Francisco Superior Court dated May 21, 2008.

15 3. Attached hereto as Exhibit "B" is a true and correct copy of defendant
16 Reliance Electric Company's Notice of Removal of Action to the Northern District
17 Court of California dated July 9, 2008.

18 I declare under penalty of perjury under the laws of the State of California
19 that the foregoing is true and correct. Executed this 31 day of July, 2008, in San
20 Francisco, California.

21 
22 THOMAS A. STEIG - Declarant

EXHIBIT A

RECEIVED THURS 8/1/08 HME

**SUMMONS
(CITATION JUDICIAL)****NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):****ASBESTOS DEFENDANTS (B&P)**As Reflected on Exhibits B, B-1, C, G, H, I; and DOES 1-8500;
and SEE ATTACHED LIST.**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):****HARRY LEMASTER and CAROLYN LEMASTER**FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

PI

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SAN FRANCISCO COUNTY SUPERIOR COURT
400 McAllister Street
San Francisco, CA 94102CASE NUMBER:
08-274669

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)

DAVID R. DONADIO, ESQ., STATE BAR NO. 154436

BRAYTON & PURCELL LLP

222 Rush Landing Road, Novato, CA 94948-6169

(415) 898-1555

DATE:

(Fecha)

MAY 21 2008

Gordon Park-Li

Clerk, by

(Secretario)

P. NATT

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO PERSON SERVED: You are served

(SEAL)

1. ☐ as an individual defendant.2. ☒ as the person sued under the fictitious name of (specify):3. ☒ on behalf of (specify):under: ☒ CCP 416.10 (corporation)☐ CCP 416.20 (defunct corporation)☐ CCP 416.40 (association of partnership)☐ other (specify):4. ☒ by personal delivery on (date):☐ CCP 416.60 (minor)☐ CCP 416.70 (conservatee)☐ CCP 416.90 (authorized person)

BRAYTON PURCELL LLP
ATTORNEYS AT LAW
222 RUSH LANDING ROAD
P.O. Box 6169
NOVATO, CALIFORNIA 94948-6169
(415) 896-1555

1 ALLIS-CHALMERS CORPORATION PRODUCT LIABILITY TRUST
2 AMERICAN STANDARD, INC.
3 ASBESTOS CORPORATION LIMITED
4 GENERAL DYNAMICS CORPORATION
5 BUCYRUS INTERNATIONAL, INC.
6 CROWN CORK & SEAL COMPANY, INC.
7 C.C. MOORE & CO. ENGINEERS
8 JOHN CRANE, INC.
9 CRANE CO.
10 THE GOODYEAR TIRE & RUBBER COMPANY
11 EATON ELECTRICAL INC.
12 ROCKWELL AUTOMATION, INC.
13 THOMAS DEE ENGINEERING CO., INC.
14 FOSTER WHEELER, LLC (FKA FOSTER WHEELER CORPORATION)
15 GARLOCK SEALING TECHNOLOGIES, LLC
16 GENERAL ELECTRIC COMPANY
17 LAMONS GASKET COMPANY
18 METALCLAD INSULATION CORPORATION
19 OWENS-ILLINOIS, INC.
20 PARKER-HANNIFIN CORPORATION
21 PLANT INSULATION COMPANY
22 QUINTEC INDUSTRIES, INC.
23 RAPID-AMERICAN CORPORATION
24 STICKLES STEAM COMPANY
25 UNION CARBIDE CORPORATION
26 UNIROYAL HOLDING, INC.
27 VIACOM, INC.
28 WESTERN MacARTHUR COMPANY
MacARTHUR COMPANY
WESTERN ASBESTOS COMPANY
HONEYWELL INTERNATIONAL, INC.
GENERAL MOTORS CORPORATION
MONTGOMERY WARD & COMPANY, INC.
SQUARE D COMPANY
THE PEP BOYS MANNY MOE & JACK OF CALIFORNIA
THE ALDRICH COMPANY, INC.
CARRIER CORPORATION
IMO INDUSTRIES, INC.
INGERSOLL-RAND COMPANY
LESLIE CONTROLS, INC.
RELIANCE ELECTRIC COMPANY
GLOBAL STEAM TRAPS
HOPEMAN BROTHERS, INC.
J.T. THORPE & SON, INC.
ACTUANT CORPORATION
METROPOLITAN LIFE INSURANCE COMPANY
GATKE CORPORATION
AMERICAN CONFERENCE OF GOVERNMENTAL INDUSTRIAL HYGIENISTS, INC.
UNDERWRITERS LABORATORIES, INC.
PNEUMO ABEX LLC
and DOES 1-8500,

Defendants.

Harry LeMaster and Carolyn LeMaster vs. Asbestos Defendants (B♦P)
San Francisco Superior Court

CASE NUMBER: CGC-08-274869 HARRY LEMASTER et al VS. ASBESTOS DEFENDANTS (B

NOTICE TO PLAINTIFF

A Case Management Conference is set for

DATE: APR-16-2009

TIME: 1:30PM

PLACE: Department 206
400 McAllister Street
San Francisco, CA 94102-3680

All parties must appear and comply with Local Rule 3.3 and 3.4.

CRC 212 (g)(1) requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state:

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): DAVID R. DONADIO, ESQ., STATE BAR NO. 154436 BRAYTON PURCELL LLP 222 Rush Landing Road Novato, California 94948-6169 TELEPHONE NO.: (415) 898-1555 FAX NO.: (415) 898-1247		FOR COURT USE ONLY ENDORSED FILED San Francisco County Superior Court MAY 21 2008 GORDON PARK LI, Clerk PARAM NATT Deputy Clerk
ATTORNEY FOR (NAME): Plaintiff(s) SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		
CASE NAME: HARRY LEMASTER and CAROLYN LEMASTER vs. ASBESTOS DEFENDANTS (B & P)		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below of the case type that best describes this case:

<input type="checkbox"/> Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <input type="checkbox"/> Other PIPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input checked="" type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product Liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIPD/WD (23) <input type="checkbox"/> Non-PIP/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/WD tort (35) <input type="checkbox"/> Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<input type="checkbox"/> Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <input type="checkbox"/> Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <input type="checkbox"/> Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<input type="checkbox"/> Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental / Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) <input type="checkbox"/> Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <input type="checkbox"/> Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination and related actions pending in one or more courts in other counties, states or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial post-judgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 10
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
- Date: 5/20/08

David R. Donadio
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

- NOTICE**
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
 - File this cover sheet in addition to any cover sheet required by local court rule.
 - If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
 - Unless this is a collections case under rule 3.740 or a complex case, this cover sheet shall be used for statistical purposes only.

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To **Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To **Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To **Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other P/UPD/W (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/
Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other P/UPD/W (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/W (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other P/UPD/W

Non-P/UPD/W (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-P/UPD/W Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller
Plaintiff (not fraud or negligence)
Negligent Breach of Contract
Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Enforcement of Judgment
Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

BRAYTON & PURCELL LLP
ATTORNEYS AT LAW
222 RUSH LANDING ROAD
P.O. BOX 6169
NOVATO, CALIFORNIA 94948-6169
(415) 898-1555

DAVID R. DONADIO, ESQ., S.B. #154436
JOHN B. GOLDSTEIN, ESQ., S.B. #198188
BRAYTON & PURCELL LLP
Attorneys at Law
222 Rush Landing Road
P.O. Box 6169
Novato, California 94948-6169
(415) 898-1555

Attorneys for Plaintiffs

ENDORSED
FILED
San Francisco County Superior Court

MAY 21 2008

GORDON PARK-LI, Clerk

BY: PARAM NATT
Deputy Clerk

APR 16 2009 1:00 PM

DEPARTMENT 206

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

HARRY LEMASTER and
CAROLYN LEMASTER,

Plaintiffs,

vs.

ASBESTOS DEFENDANTS (B & P)
As Reflected on Exhibits B, B-1, C, G, H,
I; and DOES I-8500; and SEE
ATTACHED LIST.

ASBESTOS
No.

CGC-08-274669

COMPLAINT FOR PERSONAL INJURY
AND LOSS OF CONSORTIUM -
ASBESTOS

1. Plaintiff HARRY LEMASTER was born July 23, 1938.

2. The ©Brayton & Purcell Master Complaint for Personal Injury [and Loss of Consortium]- Asbestos (hereinafter "Master Complaint") was filed January 2, 2003, in San Francisco Superior Court. A copy of the Master Complaint and General Order No. 55 may be obtained upon request from Brayton & Purcell, and designated portions of the Master Complaint are incorporated by reference herein pursuant to the authority conferred by General Order No. 55. Plaintiffs' claims are as set forth in said Master Complaint against defendants herein as follows:

///

///

///

THIS CASE IS SUBJECT TO
MANDATORY ELECTRONIC FILING
PURSUANT TO AMENDED G.O. 158

X:\Injured\109521\Comp - ptop32a.wpd

COMPLAINT FOR PERSONAL INJURY AND LOSS OF CONSORTIUM - ASBESTOS

BRAYTON ♦ PURCELL LLP
ATTORNEYS AT LAW
222 RUSH LANDING ROAD
P.O. Box 6169
NOVATO, CALIFORNIA 94948-6169
(415) 898-1555

- 1 ALLIS-CHALMERS CORPORATION PRODUCT LIABILITY TRUST
- 2 AMERICAN STANDARD, INC.
- 3 ASBESTOS CORPORATION LIMITED
- 4 GENERAL DYNAMICS CORPORATION
- 5 BUCYRUS INTERNATIONAL, INC.
- 6 CROWN CORK & SEAL COMPANY, INC.
- 7 C.C. MOORE & CO. ENGINEERS
- 8 JOHN CRANE, INC.
- 9 CRANE CO.
- 10 THE GOODYEAR TIRE & RUBBER COMPANY
- 11 EATON ELECTRICAL INC.
- 12 ROCKWELL AUTOMATION, INC.
- 13 THOMAS DEE ENGINEERING CO., INC.
- 14 FOSTER WHEELER, LLC (FKA FOSTER WHEELER CORPORATION)
- 15 GARLOCK SEALING TECHNOLOGIES, LLC
- 16 GENERAL ELECTRIC COMPANY
- 17 LAMONS GASKET COMPANY
- 18 METALCLAD INSULATION CORPORATION
- 19 OWENS-ILLINOIS, INC.
- 20 PARKER-HANNIFIN CORPORATION
- 21 PLANT INSULATION COMPANY
- 22 QUINTEC INDUSTRIES, INC.
- 23 RAPID-AMERICAN CORPORATION
- 24 STICKLES STEAM COMPANY
- 25 UNION CARBIDE CORPORATION
- 26 UNIROYAL HOLDING, INC.
- 27 VIACOM, INC.
- 28 WESTERN MacARTHUR COMPANY
- MacARTHUR COMPANY
- WESTERN ASBESTOS COMPANY
- HONEYWELL INTERNATIONAL, INC.
- GENERAL MOTORS CORPORATION
- MONTGOMERY WARD & COMPANY, INC.
- SQUARE D COMPANY
- THE PEP BOYS MANNY MOE & JACK OF CALIFORNIA
- THE ALDRICH COMPANY, INC.
- CARRIER CORPORATION
- IMO INDUSTRIES, INC.
- INGERSOLL-RAND COMPANY
- LESLIE CONTROLS, INC.
- RELIANCE ELECTRIC COMPANY
- GLOBAL STEAM TRAPS
- HOPEMAN BROTHERS, INC.
- J.T. THORPE & SON, INC.
- ACTUANT CORPORATION
- METROPOLITAN LIFE INSURANCE COMPANY
- GATKE CORPORATION
- AMERICAN CONFERENCE OF GOVERNMENTAL INDUSTRIAL HYGIENISTS, INC.
- UNDERWRITERS LABORATORIES, INC.
- PNEUMO ABEX LLC
- and DOES 1-8500,

Defendants.

Harry LeMaster and Carolyn LeMaster vs. Asbestos Defendants (B ♦ P)
San Francisco Superior Court

DEFENDANTS* ON EXHIBITS:

<u>Cause of Action</u>	<u>B</u>	<u>B-1</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>	<u>I</u>	<u>J</u>	<u>K</u>	<u>L</u>	<u>M</u>
First (Negligence)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Second (Strict Liability)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>				<input type="checkbox"/>	<input type="checkbox"/>	
Third (False Representation)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>					<input checked="" type="checkbox"/>						
Fourth (Loss of Consortium)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fifth (Premises Owner/Contractor Liability)		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>										
Sixth, Seventh, Eighth (Unseaworthiness, Negligence [Jones Act], Maintenance and Cure)				<input type="checkbox"/>									
Ninth (Longshore and Harbor Workers Compensation Act [LHWCA])					<input type="checkbox"/>								
Tenth, Eleventh (F.E.L.A.)					<input type="checkbox"/>								
Twelfth, Thirteenth (Respiratory Safety Devices)							<input type="checkbox"/>						
Fourteenth, Fifteenth (Brake Shoe Grinding)							<input checked="" type="checkbox"/>						
Sixteenth (Concert of Action)								<input checked="" type="checkbox"/>					
Seventeenth, Eighteenth (Fraud, Deceit/Negligent Misrepresentation/Concealment)									<input checked="" type="checkbox"/>				
Nineteenth (Fraud/Deceit/Intentional Misrepresentation)										<input type="checkbox"/>			
Twentieth (Fraud/Deceit - Kent)											<input type="checkbox"/>		

*and their alternate entities as set forth in the Master Complaint or on any Exhibit.

1 3. Plaintiff's asbestos-related injury, date of diagnosis, employment status, and
2 history of exposure to asbestos are as stated on Exhibit A.

3 4. Plaintiffs were married on July 25, 1959.

4 5. (a) "Exposed persons" in paragraphs 21, 68 and 69 of the Master Complaint
5 include plaintiff HARRY LEMASTER herein and plaintiff's father, Harry L. LeMaster.

6 6. Plaintiff HARRY LEMASTER, during all relevant time periods, was an
7 employee of defendant MONTGOMERY WARD & COMPANY, INC. Plaintiff is not subject
8 to the exclusive remedy provisions of Labor Code § 3601 because of the doctrine of dual
9 capacity as it existed prior to 1982 as defined by the Courts of the State of California. Plaintiff
10 was exposed to asbestos and/or other toxic substances emanating from employer defective
11 products. Such exposure caused injury.

12 7. Plaintiffs' claims against defendant VIACOM, INC. (successor by merger to
13 CBS CORPORATION which is successor-in-interest to WESTINGHOUSE ELECTRIC
14 CORPORATION) exclude military and federal government jobsites.

15
16 Dated: 5/20/08

BRAYTON ♦ PURCELL LLP

17
18 By: 

19 David R. Donadio
20 Attorneys for Plaintiffs
21
22
23
24
25
26
27
28

EXHIBIT A

EXHIBIT A

Plaintiff's exposure to asbestos and asbestos-containing products occurred at various locations both inside and outside the State of California, including but not limited to:

<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Dates</u>
U.S. Navy	U.S. Navy	Electricians Mate	1956-1959
	Naval Training Center, San Diego, CA; "A" School, San Diego, CA	Trainee	1956 (24 weeks)
	<u>HANSON (DDR-832)</u>	Electricians Mate	1956-1958
	<u>PIEDMONT (AD-17)</u>	Electricians Mate	1958-1959
	Various shipyards and repair ports, including, but not limited to: Mare Island Naval Shipyard, Vallejo, CA; Todd Shipyard, San Francisco, CA	Electricians Mate	1956-1959
Sears Roebuck	Sears Roebuck & Co. El Monte, CA	Maintenance Electrician	1959-1963
	Sears Roebuck & Co. Los Angeles, CA	Maintenance Electrician	1963-1967
Montgomery Ward	Montgomery Ward, Napa, CA	Manager	6 months in 1968
U.S. Department of Defense	Mare Island Naval Shipyard, Vallejo, CA	Welder	1968-1995
	Various ships and submarines, including, but not limited to: <u>DRUM (SSN-677)</u> <u>GUITARRO (SSN-665)</u> <u>HAWKBILL (SSN-666)</u> <u>PINTADO (SSN-672)</u> <u>MAUNA KEA (AE-22)</u>		

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EXHIBIT A

EXHIBIT A (cont'd.)

<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Dates</u>
U.S. Department of Defense (cont'd.)	Mare Island Naval Shipyard, Vallejo, CA • Shop 26 • Shop 51	Apprentice Welder	1968-1974
	Mare Island Naval Shipyard, Vallejo, CA	Pipe Welder (Nuclear)	1974-1976
	Mare Island Naval Shipyard, Vallejo, CA	Nuclear Inspector	1976-1995

PARA-OCCUPATIONAL EXPOSURE

Plaintiff's father, Harry L. LeMaster worked as a steamfitter for the Stickles Steam Company, Indianapolis, Indiana, from approximately 1950-1952. Plaintiff's father returned from work every night in work clothes that were dusty and dirty, changing out of these clothes only after arriving home. Plaintiff currently contends that he was exposed to asbestos during his father's employment with Stickles Steam Company.

NON-OCCUPATIONAL EXPOSURE

Plaintiff's father, Harry L. LeMaster performed automotive repair work, including brake replacement, on the family vehicles during the time plaintiff was growing up. Plaintiff's father worked on various vehicles including a used PONTIAC, BUICK and CHEVROLET. From age 8 or 9 and continuing until plaintiff left home, plaintiff assisted his father in brake replacement work. Plaintiff's father used a bellows to blow out dust from the brake assemblies. Plaintiff's father purchased replacement brakes from PEP BOYS, Indianapolis, Indiana; PEP BOYS, Los Angeles, California. Plaintiff's father used an emery cloth to lightly sand the new replacement brake shoes. Plaintiff currently contends that he was exposed to asbestos during this automotive repair work.

Plaintiff's exposure to asbestos and asbestos-containing products caused severe and permanent injury to the plaintiff, including, but not limited to breathing difficulties, asbestosis, lung and/or other cancer, mesothelioma, and/or other lung damage. Plaintiff was diagnosed with mesothelioma on or about April 2008.

Plaintiff retired from his last place of employment at regular retirement age. He has therefore suffered no disability from his asbestos-related disease as "disability" is defined in California Code of Civil Procedure § 340.2.

EXHIBIT A

EXHIBIT B

EXHIBIT BDEFENDANTS

ALLIS-CHALMERS CORPORATION PRODUCT LIABILITY TRUST	QUINTEC INDUSTRIES, INC.
AMERICAN STANDARD, INC.	RAPID-AMERICAN CORPORATION
ASBESTOS CORPORATION LIMITED	UNION CARBIDE CORPORATION
GENERAL DYNAMICS CORPORATION	UNIROYAL HOLDING, INC.
BUCYRUS INTERNATIONAL, INC.	VIACOM, INC.
CROWN CORK & SEAL COMPANY, INC.	WESTERN MacARTHUR COMPANY
C.C. MOORE & CO. ENGINEERS	MacARTHUR COMPANY
JOHN CRANE, INC.	WESTERN ASBESTOS COMPANY
CRANE CO.	HONEYWELL INTERNATIONAL, INC.
THE GOODYEAR TIRE & RUBBER COMPANY	GENERAL MOTORS CORPORATION
EATON ELECTRICAL INC.	MONTGOMERY WARD & COMPANY, INC.
ROCKWELL AUTOMATION, INC.	SQUARE D COMPANY
THOMAS DEE ENGINEERING CO., INC.	THE PEP BOYS MANNY MOE & JACK OF CALIFORNIA
FOSTER WHEELER, LLC (FKA FOSTER WHEELER CORPORATION)	THE ALDRICH COMPANY, INC.
GARLOCK SEALING TECHNOLOGIES, LLC	CARRIER CORPORATION
GENERAL ELECTRIC COMPANY	IMO INDUSTRIES, INC.
LAMONS GASKET COMPANY	INGERSOLL-RAND COMPANY
METALCLAD INSULATION CORPORATION	LESLIE CONTROLS, INC.
OWENS-ILLINOIS, INC.	RELIANCE ELECTRIC COMPANY
PARKER-HANNIFIN CORPORATION	GLOBAL STEAM TRAPS
PLANT INSULATION COMPANY	STICKLES STEAM COMPANY
	DOES 1-800

ALTERNATE ENTITY

ASBESTOS CORPORATION LIMITED	GENERAL DYNAMICS CORPORATION
GENERAL DYNAMICS CORPORATION	CONVAIR
	VULTEE AIRCRAFT INC.
	CONSOLIDATED VULTEE AIRCRAFT CORPORATION
	ASBESTOS CORPORATION LIMITED
BUCYRUS INTERNATIONAL, INC.	BUCYRUS-ERIE
	MARION POWER SHOVEL COMPANY, THE
	OSGOOD COMPANY
	GENERAL EXCAVATOR COMPANY
CROWN CORK & SEAL COMPANY, INC.	MUNDET CORK COMPANY
EATON ELECTRICAL INC.	CUTLER-HAMMER, INC.
	EATON CORPORATION
	YALE & TOWNE MANUFACTURING CO.

///

///

///

EXHIBIT B

EXHIBIT B (cont'd.)ALTERNATE ENTITY

1		
2		
3	CRANE CO.	CRANE COMPANY
4		CRANE PLUMBING & HEATING
5		CRANE PUMPS & SYSTEMS, INC.
6		CRANE SUPPLY
7		BURK PUMPS
8		MIDWEST PIPING CO.
9		MIDWEST PIPING & SUPPLY CO.
10		MIDWEST INVESTMENT
11	ROCKWELL AUTOMATION, INC.	PACIFIC STEEL BOILER CORPORATION
12		PACIFIC VALVES
13		CRANE VALVE GROUP
14		DEMING PUMPS
15		REPCAL BRASS MANUFACTURING CO.
16		CHAPMAN VALVE COMPANY
17		JENKINS BROS.
18		
19		ROCKWELL SPRING AND AXLE COMPANY
20		TIMKEN-DETROIT AXLE COMPANY (THE)
21		TIMKEN SILENT AUTOMATIC DIVISION
22		ALLEN-BRADLEY COMPANY, LLC.
23		ONEIDA ROSTONE CORPORATION
24		ROSTONE CORPORATION
25	FOSTER WHEELER LLC	FOSTER WHEELER CORPORATION
26	GARLOCK SEALING	GARLOCK, INC.
27	TECHNOLOGIES, LLC	COLTEC INDUSTRIES, INC.
28		FAIRBANKS-MORSE
29		FAIRBANKS MORSE ENGINES
30		BELMONT PACKING & RUBBER CO.
31		GARLOCK PACKING CO.
32		U.S. GASKET CO.
33		GOODRICH CORPORATION
34		ENPRO INDUSTRIES, INC.
35		
36	GENERAL ELECTRIC COMPANY	MATTEN X-RAY
37		HOTPOINT ELECTRIC APPLIANCE COMPANY LIMITED
38		TRUMBULL ELECTRIC MANUFACTURING COMPANY
39		G E INDUSTRIAL SYSTEMS
40		CURTIS TURBINES
41		PARSONS TURBINES
42		GENERAL ELECTRIC JET ENGINES
43		
44	LAMONS GASKET COMPANY	LAMONS METAL GASKET CO.
45		POWER ENGINEERING AND EQUIPMENT COMPANY, INC.
46		POWER ENGINEERING COMPANY
47	///	
48	///	
49	///	

EXHIBIT B

EXHIBIT B (cont'd.)ALTERNATE ENTITY

1		
2		
3	PARKER-HANNIFIN CORPORATION	SACOMA-SIERRA, INC. SACOMA MANUFACTURING COMPANY E.I.S. AUTOMOTIVE CORPORATION CONDREN CORPORATION, THE PARKER SEAL COMPANY
4		
5		
6	UNION CARBIDE CORPORATION	UNION CARBIDE CHEMICALS AND PLASTICS COMPANY, INC. UNION CARBIDE AND CARBON PRODUCTS LINDE AIR PRODUCTS COMPANY
7		
8	UNIROYAL HOLDING, INC.	UNIROYAL, INC.
9	VIACOM, INC.	CBS CORPORATION WESTINGHOUSE ELECTRIC CORPORATION WESTINGHOUSE ELECTRIC AND MANUFACTURING COMPANY B.F. STURTEVANT KPIX TELEVISION STATION- PARAMOUNT COMMUNICATIONS, INC.
10		
11		
12		
13	WESTERN MacARTHUR COMPANY	WESTERN ASBESTOS CO. MAC ARTHUR COMPANY BAY CITIES ASBESTOS COMPANY F.K. PINNEY, INC.
14		
15		
16	GENERAL MOTORS CORPORATION	NEW DEPARTURE CHEVROLET A.C. DELCO CO. BUICK AUTOMOTIVE CORPORATION CADILLAC PONTIAC LaSALLE OLDSMOBILE GM GOODWRENCH ROCHESTER PRODUCTS DIVISION EUCLID ROAD MACHINERY CO. FRIDGIDAIRE (for exposure pre 4/9/1979)
17		
18		
19		
20		
21		
22	CARRIER CORPORATION	UNITED TECHNOLOGIES HOLDING CORPORATION DAY & NIGHT HEATING & AIR CONDITIONING DAY & NIGHT MANUFACTURER COMPANY PAYNE HEATING & AIR CONDITIONING BRYANT HEATERS & BOILERS STEWART BRYANT CARRIER TRANSICOLD ELLIOT COMPANY CROCKER-WHEELER COMPANY
23		
24		
25		
26		
27	///	
28	///	

EXHIBIT B

EXHIBIT B (cont'd.)ALTERNATE ENTITY

1		
2		
3	HONEYWELL INTERNATIONAL, INC.	HONEYWELL, INC.
4		HONEYWELL CONTROLS
5		ALLIEDSIGNAL, INC.
6		ALLIED-SIGNAL, INC.
7		THE BENDIX CORPORATION
8		BENDIX PRODUCTS AUTOMOTIVE DIVISION
9		BENDIX PRODUCTS DIVISION, BENDIX AVIATION CORP.
10		BENDIX HOME SYSTEMS
11		ALLIED CORPORATION
12		ALLIED CHEMICAL CORPORATION
13		GENERAL CHEMICAL CORPORATION
14		FRAM
15		FRICITION MATERIALS OF LOS ANGELES
16		NORTH AMERICAN REFRACTORIES COMPANY
17		EM SECTOR HOLDINGS INC.
18		UNIVERSAL OIL PRODUCTS COMPANY
19		BOYLSTON CORPORATION
20		EHRHART & ASSOCIATES, INC.
21		EHRHART & ARTHUR, INC.
22		GARRETT AIR RESEARCH CORP.
23		STANLEY G. FLAGG & CO.
24		MERGENTHALER LINOTYPE COMPANY
25		ELTRA CORPORATION
26		BUNKER RAMO-ELTRA CORPORATION
27		UNION TEXAS NATURAL GAS CORPORATION
28		UNION OIL AND GAS OF LOUISIANA
		UNION SULPHUR AND OIL CORPORATION
		UNION SULPHUR COMPANY, INC., THE
		MINNEAPOLIS-HONEYWELL REGULATOR COMPANY
		SIGNAL COMPANIES, INC., THE
		HANCOCK OIL COMPANY
		BARRETT DIVISION, ALLIED CHEMICAL & DYE
		CORPORATION
20	IMO INDUSTRIES, INC.	TRANSAMERICA DELAVAL, INC.
21		ENTERPRISE ENGINE & MACHINERY CO.
22		DE LAVAL STEAM TURBINE, INC.
23		DELAVAL STEAM TURBINE
24		DELAVAL INDUSTRIES INC.
25		DE LAVAL TURBINE, INC.
26		GENERAL METALS CORPORATION
27		CROW CENTRIFUGAL PUMPS
28	LESLIE CONTROLS, INC.	LESLIE CO.
		LESLIE
		LESLIE EVENTEMP
		LESLIE TYFON
		LESLIE CONSTANTEMP
		LUBRASOFT

///

EXHIBIT B

EXHIBIT B (cont'd.)

ALTERNATE ENTITY

INGERSOLL-RAND COMPANY.

INGERSOLL-DRESSER PUMP
DRESSER-RAND CO.
PACIFIC PUMP WORKS
FLOWSERVE CORPORATION
INGERSOLL ROCK DRILL COMPANY
TERRY STEAM TURBINE CO.
WHITON MACHINE COMPANY
RAND DRILL COMPANY
RAND & WARING DRILL AND COMPRESSOR COMPANY
INGERSOLL-SERGEANT
SCHLAGE LOCK COMPANY
VON DUPRIN
THE TORRINGTON COMPANY
BLAW-KNOX COMPANY
ALDRICH PUMPS

RELIANCE ELECTRIC COMPANY

RELIANCE ELECTRIC INDUSTRIAL COMPANY
FEDERAL PACIFIC ELECTRIC COMPANY
RELIANCE ELECTRIC & ENGINEERING COMPANY

EXHIBIT B

EXHIBIT B-1

EXHIBIT B-1

DEFENDANTS

HOPEMAN BROTHERS, INC.
THOMAS DEE ENGINEERING CO., INC.
J.T. THORPE & SON, INC.
DOES 1-800; DOES 1001-2000

ALTERNATE ENTITY

J.T. THORPE & SON, INC.

THE THORPE COMPANY
THORPE PRODUCTS CO.
J.T. THORPE NORTHWEST

EXHIBIT B-1

EXHIBIT C

EXHIBIT CDEFENDANTS

HOPEMAN BROTHERS, INC.
 THOMAS DEE ENGINEERING CO., INC.
 J.T. THORPE & SON, INC.
 C.C. MOORE & CO. ENGINEERS
 PLANT INSULATION COMPANY

STICKLES STEAM COMPANY
 WESTERN MacARTHUR COMPANY
 MacARTHUR COMPANY
 WESTERN ASBESTOS COMPANY
 DOES 1901-2000

CONTRACTOR
DEFENDANTS

LOCATIONTIME PERIOD

HOPEMAN BROTHERS, INC.

Various

Various

THOMAS DEE ENGINEERING CO., INC.

Various

Various

J.T. THORPE & SON, INC.

Various

Various

C.C. MOORE & CO. ENGINEERS

Various

Various

PLANT INSULATION COMPANY

Various

Various

STICKLES STEAM COMPANY

Various

1950-1952

WESTERN MacARTHUR
 COMPANY/MacARTHUR
 COMPANY/WESTERN ASBESTOS
 COMPANY

Various

Various

EXHIBIT C

EXHIBIT G

EXHIBIT G

DEFENDANTS

ACTUANT CORPORATION
DOES 4001-4999

EXHIBIT G

EXHIBIT H

EXHIBIT HDEFENDANTS

METROPOLITAN LIFE INSURANCE COMPANY	STUART-WESTERN, INC.
PNEUMO ABEX LLC	RITESET MANUFACTURING COMPANY
BORGWARNER MORSE TEC, INC.	ASBESTOS MANUFACTURING COMPANY
HONEYWELL INTERNATIONAL, INC. (successor-in-	FIBRE & METAL PRODUCTS COMPANY
interest to ALLIEDSIGNAL, INC.)	LASCO BRAKE PRODUCTS
THE BUDD COMPANY	L.J. MILEY COMPANY
DAIMLERCHRYSLER CORPORATION	ROSSENDALE-RUBOIL COMPANY
DANA CORPORATION	SOUTHERN FRICTION MATERIALS COMPANY
FORD MOTOR COMPANY	U.S. SPRING & BUMPER COMPANY
GENERAL MOTORS CORPORATION	AUTO FRICTION CORPORATION
BRIDGESTONE/FIRESTONE	EMSCO ASBESTOS COMPANY
NORTH AMERICAN TIRE, LLC	FORCEE MANUFACTURING CORPORATION
LEAR SIEGLER DIVERSIFIED HOLDINGS CORP.	MOLDED INDUSTRIAL FRICTION CORPORATION
MAREMONT CORPORATION	NATIONAL TRANSPORT SUPPLY, INC.
MORTON INTERNATIONAL, INC.	SILVER LINE PRODUCTS, INC.
PARKER-HANNIFIN CORPORATION	STANDCO, INC.
STANDARD MOTOR PRODUCTS, INC.	UNIVERSAL FRICTION MATERIALS COMPANY
GATKE CORPORATION	WHEELING BRAKE BLOCK MANUFACTURING
GARLOCK SEALING TECHNOLOGIES, LLC	COMPANY
BRASSBESTOS BRAKE LINING COMPANY	OWENS-ILLINOIS, INC.
H. KRASNE MANUFACTURING COMPANY	BELL ASBESTOS MINES LTD.
AUTO SPECIALTIES MANUFACTURING COMPANY	DOES5000-8000

EXHIBIT H

EXHIBIT I

EXHIBIT I

DEFENDANTS

METROPOLITAN LIFE INSURANCE COMPANY
OWENS-ILLINOIS, INC.
PNEUMO ABEX LLC
GATKE CORPORATION
GARLOCK SEALING TECHNOLOGIES, LLC
AMERICAN CONFERENCE OF GOVERNMENTAL INDUSTRIAL HYGIENISTS, INC.
UNDERWRITERS LABORATORIES, INC.
DOES5000-7500

EXHIBIT I

1 DAVID R. DONADIO, ESQ., S.B. #154436
 2 BRAYTON ♦ PURCELL LLP
 3 Attorneys at Law
 4 222 Rush Landing Road
 5 P.O. Box 6169
 6 Novato, California 94948-6169
 7 (415) 898-1555

8 Attorneys for Plaintiffs

ENDORSED
 FILED
 San Francisco County Superior Court

MAY 21 2008

GORDON PARK-LI, Clerk

BY: PARAM NATT
 Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN FRANCISCO

HARRY LEMASTER and
 CAROLYN LEMASTER,

Plaintiffs,

vs.

ASBESTOS DEFENDANTS (B ♦ P)

ASBESTOS

No. CGC-08-274669

PRELIMINARY FACT SHEET/NEW
 FILING/ASBESTOS LITIGATION

(See General Order No. 129, In Re:
 Complex Asbestos Litigation)

NOTICE

TO NEW DEFENDANTS SERVED IN COMPLEX ASBESTOS LITIGATION IN THE
 SUPERIOR COURT IN AND FOR THE STATE OF CALIFORNIA, CITY AND COUNTY OF
 SAN FRANCISCO

You have been served with process in an action which has been designated by the Court
 as complex litigation pursuant to Standard 19 of the Standards of Judicial Administration. This
 litigation bears the caption "In Re: Complex Asbestos Litigation", [San Francisco Superior
 Court No. 828684].

This litigation is governed by various general orders, some of which affect the judicial
 management and/or discovery obligations, including the responsibility to answer interrogatories
 deemed propounded in the case. You may contact the Court or Designated Defense Counsel,
 Berry & Berry, P.O. Box 16070, 2930 Lakeshore Avenue, Oakland, CA 94610; Telephone:
 (510) 835-8330; FAX: (510) 835-5117, for further information and/or copies of these orders, at
 your expense.

1. State the complete name and address of each person whose claimed exposure to asbestos is
 the basis of this lawsuit ("exposed person"): Harry LeMaster, 6315 Kings Hill Drive, Cumming,
Georgia 30040.

PRELIMINARY FACT SHEET/NEW FILING/ASBESTOS LITIGATION

BRAYTON ♦ PURCELL LLP
 ATTORNEYS AT LAW
 222 RUSH LANDING ROAD
 P.O. BOX 6169
 NOVATO, CALIFORNIA 94948-6169
 (415) 898-1555

1 2. Does plaintiff anticipate filing a motion for a preferential trial date within the next four
2 months? X Yes No

3 [If yes, the action will be governed by General Order No. 140; if no, the action will be governed
4 by General Order No. 129.]

5 3. Date of birth of each exposed person in item one and, if applicable, date of death:

6 Date of Birth: 7/23/38

7 Date of Death: N/A

8 Social Security Number of each exposed person:

9 566-48-7658

10 4. Specify the nature or type of asbestos-related disease alleged by each exposed person.

11 Asbestosis X Mesothelioma

12 Pleural Thickening/Plaques Other Cancer: Specify:

13 Lung Cancer Other Than Mesothelioma Other: Specify:

14 5. For purposes of identifying the nature of exposure allegations involved in this action, please
15 check one or more:

16 X Shipyard X Construction X Friction-Automotive

17 Premises Aerospace X Military

18 X Other: Specify all that apply: Para-occupational/Secondary

19 If applicable, indicate which exposure allegations apply to which exposed person.

20 6. Identify each location alleged to be a source of an asbestos exposure, and to the extent known,
21 provide the beginning and ending year(s) of each such exposure. Also specify each exposed
22 person's employer and job title or job description during each period of exposure. (For example:
23 "San Francisco Naval Shipyard - Pipefitter - 1939-1948"). Examples of locations of exposure
24 might be a specific shipyard, a specific railroad maintenance yard, or perhaps more generalized
25 descriptions such as "merchant marine" or "construction". If an exposed person claims exposure
26 during only a portion of a year, the answer should indicate that year as the beginning and ending
27 year (e.g., 1947-1947).

28 ///

<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Dates</u>
U.S. Navy	U.S. Navy	Electricians Mate	1956-1959
	Naval Training Center, San Diego, CA; "A" School, San Diego, CA	Trainee	1956 (24 weeks)
	<u>HANSON</u> (DDR-832)	Electricians Mate	1956-1958
	<u>PIEDMONT</u> (AD-17)	Electricians Mate	1958-1959
	Various shipyards and repair ports, including, but not limited to: Mare Island Naval Shipyard, Vallejo, CA; Todd Shipyard, San Francisco, CA	Electricians Mate	1956-1959
Sears Roebuck	Sears Roebuck & Co. El Monte, CA	Maintenance Electrician	1959-1963
	Sears Roebuck & Co. Los Angeles, CA	Maintenance Electrician	1963-1967

(Attach Additional Pages, If Necessary) SEE ATTACHED CONTINUATION

7. For each exposed person who:

a. worked in the United States or for a U.S. agency outside the territorial United States, attach to the copy of this fact sheet provided to Designated Defense Counsel a fully executed Social Security Earnings authorization (Exhibit N-4 to General Order No. 129);

b. may have had a Social Security disability award or is no longer employed and whose last employment was not with a United States government agency, attach to the copy of this fact sheet provided to Designated Defense Counsel a fully executed Social Security Disability authorization (Exhibit N-5 to General Order No. 129);

c. served at any time in the United States military, attach to the copy of this fact sheet provided to Designated Defense Counsel two fully executed originals of the stipulation (Exhibit N-3 to General Order No. 129);

///

1 d. was employed by the United States government in a civilian capacity, attach to the
2 copy of this fact sheet provided to Designated Defense Counsel two fully executed originals of
3 the stipulation (Exhibit N-3 to General Order No. 129).

4 8. If there is a wrongful death claim, attach to the copy of this fact sheet provided to Designated
5 Defense Counsel a copy of the death certificate, if available. If an autopsy report was done, also
6 attach a copy of it to the copy of this fact sheet provided to Designated Defense Counsel.

7 9. State the date of the filing of the initial complaint in this matter:

8 5/21/08

9 By: 

10 Attorney for Plaintiffs

<u>Employer</u>	<u>Location of Exposure</u>	<u>Job Title</u>	<u>Exposure Dates</u>
Montgomery Ward	Montgomery Ward, Napa, CA	Manager	6 months in 1968
U.S. Department of Defense	Mare Island Naval Shipyard, Vallejo, CA	Welder	1968-1995
	Various ships and submarines, including, but not limited to: <u>DRUM (SSN-677)</u> <u>GUITARRO (SSN-665)</u> <u>HAWKBILL (SSN-666)</u> <u>PINTADO (SSN-672)</u> <u>MAUNA KEA (AE-22)</u>		
	Mare Island Naval Shipyard, Vallejo, CA • Shop 26 • Shop 51	Apprentice Welder	1968-1974
	Mare Island Naval Shipyard, Vallejo, CA	Pipe Welder (Nuclear)	1974-1976
	Mare Island Naval Shipyard, Vallejo, CA	Nuclear Inspector	1976-1995

16 PARA-OCCUPATIONAL EXPOSURE

17 Plaintiff's father, Harry L. LeMaster worked as a steamfitter for the Stickles Steam Company, Indianapolis, Indiana, from approximately 1950-1952. Plaintiff's father returned from work every night in work clothes that were dusty and dirty, changing out of these clothes only after arriving home. Plaintiff currently contends that he was exposed to asbestos during his father's employment with Stickles Steam Company.

20 NON-OCCUPATIONAL EXPOSURE

21 Plaintiff's father, Harry L. LeMaster performed automotive repair work, including brake replacement, on the family vehicles during the time plaintiff was growing up. Plaintiff's father worked on various vehicles including a used PONTIAC, BUICK and CHEVROLET. From age 8 or 9 and continuing until plaintiff left home, plaintiff assisted his father in brake replacement work. Plaintiff's father used a bellows to blow out dust from the brake assemblies. Plaintiff's father purchased replacement brakes from PEP BOYS, Indianapolis, Indiana; PEP BOYS, Los Angeles, California. Plaintiff's father used an emery cloth to lightly sand the new replacement brake shoes. Plaintiff currently contends that he was exposed to asbestos during this automotive repair work.

1 ALAN R. BRAYTON, ESQ., S.B. #73685
 2 DAVID R. DONADIO, ESQ., S.B. #154436
 3 JOHN B. GOLDSTEIN, ESQ., S.B. #198188
 4 BRAYTON ♦ PURCELL LLP
 5 Attorneys at Law
 6 222 Rush Landing Road
 7 P.O. Box 6169
 8 Novato, California 94948-6169
 9 (415) 898-1555

10 Attorneys for Plaintiffs

11 SUPERIOR COURT OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 HARRY LEMASTER and
 14 CAROLYN LEMASTER,

15 Plaintiffs,

16 vs.

17 ASBESTOS DEFENDANTS (B ♦ P)

18 ASBESTOS
 19 No. 274669

20 AMENDMENT TO COMPLAINT

21 [C.C.P. Section 474]

22 Plaintiffs amend the complaint in this action as follows:

23 Plaintiffs have learned the true names of the defendants designated in the complaint as
 24 fictitious DOES as set forth below:

25 TRUE NAME

26 FICTITIOUS NAME

27 STICKLE STEAM SPECIALTIES CO INC

28 DOE 1 and 1001

29 Plaintiffs hereby substitute such true names for the fictitious names as set forth above
 30 wherever said names appear in the complaint.

31 Dated: 5/28/11

32 BRAYTON ♦ PURCELL LLP

33 By: 

34 David R. Donadio
 35 Attorneys for Plaintiffs

CIV-050

- DO NOT FILE WITH THE COURT -
 - UNLESS YOU ARE APPLYING FOR A DEFAULT JUDGMENT UNDER CODE OF CIVIL PROCEDURE § 585 -

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): DAVID R. DONADIO, ESQ. (Bar # 154436) BRAYTON♦PURCELL LLP 222 Rush Landing Road Novato, California 94948-6169 ATTORNEY FOR (name): Plaintiff(s)		TELEPHONE NO. (415) 898-1555 FAX NO. (415) 898-1247
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco 94102 BRANCH NAME:		
PLAINTIFF: HARRY LEMASTER and CAROLYN LEMASTER DEFENDANT: ASBESTOS DEFENDANTS (B♦P)		
STATEMENT OF DAMAGES (Personal Injury or Wrongful Death)		CASE NUMBER: 274669

To (name of one defendant only): STICKLE STEAM SPECIALTIES CO INC

 Plaintiff (name of one plaintiff only): HARRY LEMASTER
 seeks damages in the above-entitled action, as follows:

- | | AMOUNT |
|---|-----------------|
| 1. General damages | |
| a. <input checked="" type="checkbox"/> Pain, suffering, and inconvenience | \$ 1,000,000.00 |
| b. <input checked="" type="checkbox"/> Emotional distress | \$ 1,000,000.00 |
| c. <input type="checkbox"/> Loss of consortium | \$ _____ |
| d. <input type="checkbox"/> Loss of society and companionship (wrongful death actions only) | \$ _____ |
| e. <input type="checkbox"/> Other (specify) | \$ _____ |
| f. <input type="checkbox"/> Other (specify) | \$ _____ |
| g. <input type="checkbox"/> Continued on Attachment 1.g. | |
| 2. Special damages | |
| a. <input checked="" type="checkbox"/> Medical expenses (to date) | \$ 200,000.00 |
| b. <input checked="" type="checkbox"/> Future medical expenses (present value) | \$ 200,000.00 |
| c. <input type="checkbox"/> Loss of earnings (to date) | \$ _____ |
| d. <input checked="" type="checkbox"/> Loss of future earning capacity (present value) | \$ 1,500,000.00 |
| e. <input type="checkbox"/> Property damage | \$ _____ |
| f. <input type="checkbox"/> Funeral expenses (wrongful death actions only) | \$ _____ |
| g. <input type="checkbox"/> Future contributions (present value) (wrongful death actions only) | \$ _____ |
| h. <input type="checkbox"/> Value of personal service, advice, or training (wrongful death actions only) | \$ _____ |
| i. <input checked="" type="checkbox"/> Other (specify) LOSS OF HOUSEHOLD SERVICES | \$ 1,000,000.00 |
| j. <input type="checkbox"/> Other (specify) | \$ _____ |
| k. <input type="checkbox"/> Continued on Attachment 2.k. | |
| 3. <input checked="" type="checkbox"/> Punitive damages: Plaintiff reserves the right to seek punitive damages in the amount of (specify) | \$ 5,000,000.00 |
| when pursuing a judgment in the suit filed against you. | |
| Date: May 29, 2008 | |

 David R. Donadio
 (TYPE OR PRINT NAME)

/s/ David R. Donadio

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

(Proof of service on reverse)

CIV-050

— DO NOT FILE WITH THE COURT —
 — UNLESS YOU ARE APPLYING FOR A DEFAULT JUDGMENT UNDER CODE OF CIVIL PROCEDURE § 585 —

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): DAVID R. DONADIO, ESQ. (Bar # 154436) BRAYTON♦PURCELL LLP 222 Rush Landing Road Novato, California 94948-6169 ATTORNEY FOR (name): Plaintiff(s)		TELEPHONE NO. (415) 898-1555 FAX NO. (415) 898-1247
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco 94102 BRANCH NAME:		
PLAINTIFF: HARRY LEMASTER and CAROLYN LEMASTER DEFENDANT: ASBESTOS DEFENDANTS (B♦P)		
STATEMENT OF DAMAGES (Personal Injury or Wrongful Death)		CASE NUMBER: 274669

To (name of one defendant only): STICKLE STEAM SPECIALTIES CO INC

 Plaintiff (name of one plaintiff only): CAROLYN LEMASTER
 seeks damages in the above-entitled action, as follows:

- | | AMOUNT |
|---|------------------------|
| 1. General damages | |
| a. <input type="checkbox"/> Pain, suffering, and inconvenience | \$ |
| b. <input type="checkbox"/> Emotional distress | \$ |
| c. <input checked="" type="checkbox"/> Loss of consortium | \$ <u>1,000,000.00</u> |
| d. <input type="checkbox"/> Loss of society and companionship(wrongful death actions only) | \$ |
| e. <input type="checkbox"/> Other (specify) | \$ |
| f. <input type="checkbox"/> Other (specify) | \$ |
| g. <input type="checkbox"/> Continued on Attachment 1.g. | |
| 2. Special damages | |
| a. <input type="checkbox"/> Medical expenses (to date) | \$ |
| b. <input type="checkbox"/> Future medical expenses (present value) | \$ |
| c. <input type="checkbox"/> Loss of earnings (to date) | \$ |
| d. <input type="checkbox"/> Loss of future earning capacity (present value) | \$ |
| e. <input type="checkbox"/> Property damage | \$ |
| f. <input type="checkbox"/> Funeral expenses (wrongful death actions only) | \$ |
| g. <input type="checkbox"/> Future contributions (present value) (wrongful death actions only) | \$ |
| h. <input type="checkbox"/> Value of personal service, advice, or training (wrongful death actions only) | \$ |
| i. <input type="checkbox"/> Other (specify) | \$ |
| j. <input type="checkbox"/> Other (specify) | \$ |
| k. <input type="checkbox"/> Continued on Attachment 2.k. | |
| 3. <input checked="" type="checkbox"/> Punitive damages: Plaintiff reserves the right to seek punitive damages in the amount of (specify) | \$ <u>5,000,000.00</u> |
| when pursuing a judgment in the suit filed against you. | |
| Date: May 29, 2008 | |

 David R. Donadio
 (TYPE OR PRINT NAME)

/s/ David R. Donadio

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

(Proof of service on reverse)

EXHIBIT B

1 TUCKER ELLIS & WEST LLP
2 EVAN C. NELSON - STATE BAR NO. 172957
3 TIMOTHY C. CONNOR - STATE BAR NO. 236529
4 135 Main Street, Suite 700
5 San Francisco, California 94105
6 Telephone: (415) 617-2400
7 Facsimile: (415) 617-2409
8 Email: evan.nelson@tuckerellis.com
9 Email: timothy.connor@tuckerellis.com

10 Attorneys for Defendant
11 RELIANCE ELECTRIC COMPANY

ORIGINAL FILED
E-filing JUL - 9 2008

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 08 3316
Case No.

11 HARRY LEMASTER and CAROLYN
12 LEMASTER,

13 Plaintiffs,

14 v.

15 ALLIS-CHAMBERS CORPORATION
16 PRODUCT LIABILITY TRUST, et al

17 Defendants.

DEFENDANT RELIANCE ELECTRIC
COMPANY'S NOTICE OF REMOVAL
OF ACTION UNDER 28 U.S.C. §
1442(a)(1) (GOVERNMENT
CONTRACTOR IMMUNITY-ACTING
UNDER DIRECTION OF FEDERAL
OFFICERS)

JCS

18
19 TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE
20 NORTHERN DISTRICT OF CALIFORNIA:

21 Defendant RELIANCE ELECTRIC COMPANY (hereinafter referred to as
22 "RELIANCE") hereby gives notice of the removal of the above-entitled action from the Superior
23 Court of the State of California in and for the County of San Francisco, to the United States
24 District Court for the Northern District of California pursuant to 28 U.S.C. §§ 1442(a)(1). In
25 support of its removal, RELIANCE respectfully offers the following:
26
27
28

1
RELIANCE ELECTRIC COMPANY'S NOTICE OF
REMOVAL OF ACTION UNDER 28 U.S.C. §
1442(A)(1)

Preliminary Matters

1. On or about May 21, 2008, Plaintiffs filed a Complaint in this action, bearing Case No. CGC-08-274669, against RELIANCE and numerous other defendants in the Superior Court of the State of California for the County of San Francisco. A true and correct copy of the Complaint and all state court pleadings served on RELIANCE are attached hereto as Exhibit A.

2. The Complaint alleges that Plaintiff Harry LeMaster's disease was caused by his exposure to asbestos-containing products while working at several locations, including work performed as an Electrician's Mate in the U.S. Navy from 1956-1959 and work as a welder for the U.S. Department of Defense from 1968-1995. Plaintiff's Responses to Standard Asbestos Case Interrogatories, Set One further allege that Plaintiff specifically worked with RELIANCE controllers and switchgear while in the Navy from 1956-1959 and while working for the Department of Defense from 1968-1995. A true and correct copy of the Plaintiff's Responses to Standard Asbestos Case Interrogatories, Set One is attached hereto as Exhibit B.

3. Any and all equipment produced by RELIANCE for the United States Navy was specifically designed and manufactured in accordance with specifications established and maintained by the United States Navy and was designed and built under the direction and control of the United States Government and its officers. Accordingly, this case is removable on the ground of federal officer removal jurisdiction pursuant to 28 U.S.C. § 1442(a)(1).

4. The 30-day removal period prescribed by 28 U.S.C. § 1446(b) begins to run when defendant receives a copy of the initial pleading setting forth the claim for relief upon which such action is based. 28 U.S.C. § 1446(b). On June 10, 2008, Plaintiffs electronically served Responses to Standard Asbestos Case Interrogatories on RELIANCE. The receipt of these Interrogatory Responses put RELIANCE on notice for the first time that the claims that are the basis of this matter as to RELIANCE, involve Plaintiff Harry LeMaster's alleged exposure to asbestos through his interactions with RELIANCE equipment manufactured for the United States Government pursuant to specifications provided by the United States Navy and under the direction and control of the United States Government and its officers. Pursuant to 28 U.S.C. §

1 1446(b), this Notice of Removal is being filed within thirty days of receipt by RELIANCE of the
 2 first paper from which RELIANCE ascertained that this case is removable. Thus, this Notice of
 3 Removal has been timely filed.

4 Nature of the Case

5 5. The case is based on allegations that plaintiff Harry LeMaster suffers from an
 6 asbestos-related injury caused by his exposure to asbestos-containing products.

7 6. Plaintiff Harry LeMaster asserts claims against RELIANCE for Negligence, Strict
 8 Liability, and False Representation.

9 7. Plaintiff Carolyn LeMaster asserts claims against RELIANCE for Loss of
 10 Consortium.

11 Jurisdiction, Venue and Intradistrict Assignment

12 8. Jurisdiction is based on 28 U.S.C. §§ 1331 and 1442(a)(1) as set forth below
 13 under Grounds for Removal.

14 9. Venue is proper in the San Francisco Branch of the Northern District of California
 15 as the state court action, which is subject to this removal petition, was filed in the Superior Court
 16 of California for the County of San Francisco where it was alleged a substantial part of the
 17 events giving rise to plaintiffs' claims herein occurred, and all parties are subject to personal
 18 jurisdiction in this District.

19 10. Furthermore, §1442(a) authorizes such a removal without the consent of any other
 20 defendant. *See Ely Valley Mines, Inc. v. Hartford Acc. & Indem. Co.*, 644 F.2d 1310, 1314-1315
 21 (9th Cir. 1981) ("federal officer...can remove without other defendants joining the petition, and
 22 the entire case is removed to the federal court.").

23 Grounds for Removal

24 11. This is a civil action over which this Court has original jurisdiction under 28
 25 U.S.C. § 1331, and is removable to this Court by RELIANCE pursuant to the provisions of 28
 26 U.S.C. § 1442(a)(1) in that it is a civil action in which plaintiffs' alleged right to relief
 27 necessarily depends on the resolution of a substantial question of federal law.

12. At all relevant times, RELIANCE is a "person" within the meaning of 28 U.S.C. § 1442(a)(1). *Fung v. Abex Corp.*, 816 F.Supp. 569, 572 (N.D.Cal. 1992) (finding that a corporate defendant was a "person").

13. RELIANCE was acting under the direction of an officer of the United States within the meaning of 28 U.S.C. § 1442(a)(1) in designing, manufacturing and supplying motors controls and switchgear for and to the United States Navy and/or Military. Motors, controllers and switchgear manufactured for use on United States Navy vessels were required to strictly comply with reasonably precise specifications in the form of Military Specifications (MilSpecs) and/or the military approval process. *See Declaration of Thomas F. McCaffery* ¶ 8 attached hereto as Exhibit C. Before a manufacturer such as RELIANCE received authorization to manufacture or supply machinery such as motors or related equipment such as controllers or switchgear for/to the U.S. Navy, all of the drawings, plans, technical manuals and other design documentation first had to be inspected and approved by the U.S. Navy. *Id.* at ¶ 10. Thus, RELIANCE has a colorable federal defense to plaintiffs' state tort claims.

14. Should plaintiffs file a motion to remand this case, RELIANCE respectfully requests an opportunity to respond more fully in writing, but offers the following authorities at this time:

15. Removal pursuant to 28 U.S.C. § 1442(a)(1) is appropriate where the moving party can (a) demonstrate that it acted under the direction of a federal officer, (b) raise a colorable federal defense to plaintiffs' claims, and (c) demonstrate a causal nexus between plaintiffs' claims and the acts it performed under color of federal office. *See Mesa v. California*, 489 U.S. 121, 124-25, 129-31, 134-35 (1989); *Fung v. Abex Corp.*, 816 F.Supp. 569 (N.D.Cal. 1992); *Machnik v. Buffalo Pumps, Inc.*, 506 F.Supp.2d 99, 102 (D.Conn. 2007). Here, RELIANCE has satisfied all three requirements and is entitled to the federal officer removal provision.

a) RELIANCE was acting under the direction of agents and officers of the United States Government within the meaning of 28 U.S.C. § 1442(a)(1) in designing,

1 manufacturing and supplying motors, controls and switchgear pursuant to
2 specifications and designs prepared, drafted and issued exclusively by the United
3 States Navy. See Exhibit C *Declaration of Thomas F. McCaffery*. United States
4 Naval Machinery Inspectors were stationed on site at manufacturing facilities to
5 inspect and test this equipment during each phase of the manufacturing process. *Id.*
6 at ¶ 11. The U.S. Navy had direct and detailed control over every aspect of the
7 design and manufacture of the RELIANCE motors, controls, and switchgear. The
8 Navy required use of many different components and materials that comprised an
9 electric motor or controller or switchgear. *Id.* at 12. Each sub-component was
10 designed and manufactured in accordance with similarly precise specifications,
11 standards and, design reviews which also specifically required the precise type of
12 material to be used in these components. *Id.* Where the specifications or standards
13 permitted the manufacturer to choose between two or more types of materials (such
14 as plastic materials or electrical insulation materials), the contractor's choice was
15 subject to specific Navy review and approval. *Id.* If a component on a piece of naval
16 equipment, such as a Reliance Electric motor, controller or switchgear, was actually
17 installed onboard a U. S. Naval vessel, then that component and the material
18 composition of that component complied with the precise specifications, standards
19 and design requirements that the Navy required for such a component. *Id.* at 14. In
20 fact, if any material, feature or component of the equipment failed to comply with the
21 applicable military specifications, then it would have been rejected by the Military.
22 *Id.*, at ¶ 11. RELIANCE was truly acting under the direction of a federal officer
23 because every facet of the design and manufacture of any piece of equipment
24 supplied by Reliance Electric to the U.S. Navy was controlled by the U.S. Navy. *Id.*
25 at 15.

- 26 b) RELIANCE raises a colorable federal defense to this action under military contractor
27 immunity in that the United States Navy, controlled the design and manufacture of
28

any motors and controls produced for the United States Navy. *Id.* at ¶ 12. The designs and specifications for all RELIANCE motors and controls intended for use by the United States Navy were approved by the appropriate Navy personnel. *Id.* at 11. To the extent that any piece of equipment supplied by RELIANCE to the U.S. Navy contained asbestos, it would have been specifically required or approved by the Navy through the MilSpec and design approval process. *Id.* at ¶ 12. The specifications applicable to motors for use onboard United States Naval vessels include, but are not limited to, MIL-M-1940, MIL-M-17059, MIL-M-17060, MIL-M-17413, MIL-M-17556, and MLL-G-18474. *Id.* at 8. The specifications applicable to motor controllers, circuit breakers, rheostats and similar electrical components include, but are not limited to, MIL-C-1938, MIL-C-1939, MIL-R-2033, MIL-C-2174, MIL-C-2212, MIL-R-15109 and MIL-C-17361. *Id.* Finally, the overall design of electrical systems for naval shipboard use was controlled by a separate specification MIL-E-917. *Id.* If a component in motors, controllers or switchgears contained asbestos, then the Navy approved the inclusion of asbestos in that component in one form or another. *Id.* at 14. Given the breadth of experience of the United States Navy in the realm of industrial hygiene, a company such as RELIANCE would not have had the same level of sophisticated, state of the art knowledge concerning potential asbestos hazards as the Navy. *Id.* at ¶ 16.

- c) A causal nexus exists between Plaintiffs' claims in this action and the acts taken by RELIANCE under the direction of federal officers. Plaintiffs' claims against RELIANCE arise from plaintiff Harry LeMaster's work as an Electrician's Mate while in the U.S. Navy from 1956-1959. The equipment that Plaintiff allegedly worked with was designed and manufactured pursuant to precise military specifications provided by the U.S. Navy and was built under the detailed and direct control of federal officers. *Id.* at 11. RELIANCE's actions, then, are inseparable from the government specifications, regulations, and oversight, and a clear causal

nexus exists between plaintiffs' claims and RELIANCE's acts performed under color of federal office. See *Boyle v. United Technologies Corp.*, 487 U.S. 500, 108 S.Ct. 2510 (1988); *Sundstrom v. McDonnell Douglas Corp.*, 816 F.Supp. 587 (N.D. Cal. 1993); *Fung v. Abex Corp.*, 816 F.Supp. 569 (N.D. Cal. 1992); *Pack v. AC and S, Inc.* 838 F. Supp. 1099 (D. Md. 1993); *Crocker v. Borden* 852 F.Supp. 1322 (E.D. La. 1994); *Arness v. Boeing North American, Inc.*, 997 F.Supp. 1268 (C.D. Cal. 1998).

16. Plaintiffs' claims against RELIANCE are affirmatively barred by government contractor immunity as set forth by the U.S. Supreme Court in *Boyle v. United Technologies Corp.*, 487 U.S. 500, 108 S.Ct. 2510 (1988), and by the Ninth Circuit Court of Appeals in *McKay v. Rockwell International Corp.*, 704 F.2d 444 (9th Cir. 1983). Pursuant to this federal defense, military equipment manufacturers, such as RELIANCE, cannot be held liable under state law for any injuries caused by the equipment it built for the U.S. Navy or Military when: (a) the United States approved reasonably precise specifications; (b) the equipment conformed to these specifications; and (c) the equipment supplier warns the military about any hazards involved in the use of the equipment that are known to the equipment supplier but not known to the military. See *Boyle*, 487 U.S. 500 at 512; *McKay*, 704 F.2d. 444 at 451.

17. Analyzing the *Boyle/McKay* factors with the facts above shows (a) that RELIANCE designed and manufactured equipment pursuant to precise specifications provided and approved by the U.S. Navy, (b) the equipment conformed to those specifications, and (c) the United States Military was aware of potential health hazards of working with or around asbestos-containing materials and possessed greater knowledge than RELIANCE of the same. *Declaration of Thomas F. McCaffery*, Exhibit C, ¶ 16. RELIANCE has more than a colorable federal defense to this state action under government contractor immunity. See *Boyle*, 487 U.S. at 512. See also *Sundstrom v. McDonnell Douglas Corp.*, 816 F.Supp. 587 (N.D. Cal. 1993); *Fung v. Abex Corp.*, 816 F.Supp. 569 (N.D. Cal. 1992); *Pack v. AC and S, Inc.* 838 F. Supp. 1099 (D. Md. 1993); *Crocker v. Borden* 852 F.Supp. 1322 (E.D. La. 1994); *Arness v. Boeing North American, Inc.*, 997 F.Supp. 1268 (C.D. Cal. 1998).

1 18. The existence of a single removable claim allows removal of the entire action. 28
2 U.S.C. § 1441(c). *National Audubon Society v. Dept. of Water*, 496 F.Supp. 499, 509 (E.D. Cal.
3 1980).

4 19. Notice of this removal has been filed with the state court and provided to all
5 adverse parties pursuant to 28 U.S.C. § 1446(d).

6 20. This removal is based on this Notice of Removal to the United States District
7 Court, the Certificate of Service of Notice to Adverse Party of Removal, the Notice to Adverse
8 Party of Removal filed in the state court action, the Tag-Along Pleading filed herewith, the
9 complete file in the state court case, and any other matters which the court deems applicable.

10 WHEREFORE, defendant RELIANCE prays that this action be removed from the
11 Superior Court of the State of California in and for the County of San Francisco to the United
12 States District Court for the Northern District of California, and transferred to the United States
13 District Court, Eastern District of Pennsylvania, for coordinated or consolidated pretrial
14 proceedings pursuant to 28 U.S.C. § 1407 ("MDL Transfer Order").

15
16 DATED: July 9, 2008

TUCKER ELLIS & WEST LLP

17
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19 By: 

Evan C. Nelson
Timothy C. Connor
Attorneys for Defendant
RELIANCE ELECTRIC COMPANY

Harry Lemaster, et al. v. Allis-Chalmers Corporation, et al.

SFSC Case No. 274669

**PROOF OF SERVICE OF ELECTRONIC TRANSMISSION
STATE OF CALIFORNIA – COUNTY OF SAN FRANCISCO**

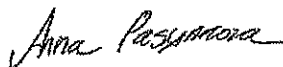
I, the undersigned, declare: that I am, and was at the time of service of the documents herein referred to, over the age of 18 years, and not a party to the action; and I am employed in the County of San Francisco, State of California. My business address is 135 Main Street, Suite 700, San Francisco, California 94105. My electronic notification address is anna.pasynkova@tuckerellis.com.

On the date executed below, I electronically served the document(s) via Lexis Nexis File & Serve described as:

**DEFENDANT RELIANCE ELECTRIC COMPANY'S NOTICE OF REMOVAL
OF ACTION**

on the recipients designated on the Transaction Receipt located on the LexisNexis File & Serve website. This service was completed in accordance with the Amended General Order No. 158.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct and was executed on July 9, 2008, at San Francisco, California.



Anna Pasynkova

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8 **Attorneys for Specially Appearing Defendant,**

9 **STICKLE STEAM SPECIALTIES CO., INC.**

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12
13 HARRY LEMASTER and
14 CAROLYN LEMASTER,

15 Plaintiffs,

16 v.

17
18 ALLIS-CHAMBERS
19 CORPORATION PRODUCT
20 LIABILITY TRUST, et al.,

21 Defendants.

) Case No.: CV 08 3316 JCS (PJH)

)

) **[PROPOSED] ORDER GRANTING**
) **MOTION TO DISMISS BASED ON**
) **LACK OF PERSONAL JURISDICTION**

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Date: September 10, 2008

Time: 9:00 am

Courtroom: 3

United States District Court Judge
Honorable Phyllis J. Hamilton

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1 The motion of specially appearing defendant Stickle Steam Specialties Co.,
2 Inc. for an order dismissing it from this action came on for hearing in Courtroom
3 3 of the above entitled Court on September 10, 2008. The parties were
4 represented by their counsels of record herein.

5 After full consideration of the evidence, argument and authorities filed, as
6 well as any oral arguments submitted at the hearing, if any, the Court ruled as
7 follows:

8 (1) There is no constitutionally sufficient basis for the State of California
9 to exercise jurisdiction over defendant Stickle Steam Specialties Co., Inc.

10 **THEREFORE, IT IS ORDERED THAT** defendant Stickle Steam
11 Specialties Co., Inc.'s motion to dismiss based on lack of personal jurisdiction is
12 granted.

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14 DATED: _____

15 HONORABLE PHYLLIS J. HAMILTON,
16 JUDGE OF THE DISTRICT COURT
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